UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	:	Chapter 13
Khandi Phaka Loko	:	Case No. 16-55836
	:	Judge Caldwell
	:	
Debtor	:	

MOTION FOR DETERMINATION THAT MORTGAGE/LIEN IS WHOLLY UNSECURED AND VOID

Now comes Debtor, by and through undersigned counsel, and respectfully moves the Court, pursuant to 11 U.S.C. §§506, 1322(b)(12), 1325(a) and 1327(c), and Federal Rules of Procedure 3012, 9013 and 9014(b), for an order determining that the mortgage/liens of State of Ohio – Department of Taxation (the "Creditor") is wholly unsecured and void.

Support for the Motion is set forth below.

MEMORANDUM IN SUPPORT

1. The Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code on September 8, 2016 (the "Petition Date").
2. As of the Petition Date, the Debtor was the owner of the following real property located at 3252 Stoudt Place Canal Winchester, OH 43110 (the "Property"). The Debtor owns the Property individually. A legal description of the Property is attached hereto as Exhibit A.
3. The value of the Property as of the Petition Date, as set forth in the appraisal filed with the Court as Doc #15, was $130,300.00.
4. As of the Petition Date, the Property was subject to certain mortgages/liens in the amounts specified and in the relative priority set forth below:
    a. First mortgage/lien: Freedom Mortgage in the amount of $122,252.19. The first mortgage/lien was obtained by the mortgagee/lienholder on December 8, 2009. The first mortgage/lien was filed of record on December19, 2009, in the Office of the Recorder, Franklin County, Ohio, as Instrument Number 200912180183041.

b. Second mortgage/lien: US Department of HUD in the amount of $8,094.72. The second mortgage/lien was obtained by the mortgagee/lienholder on March 8, 2013. The second mortgage/lien was filed of record on April 22, 2013, in the Office of the Recorder, Franklin County, Ohio, as Instrument Number 201304220065463.

5. The Creditor's mortgage/liens sought to be avoided are in the amount of $1,233.50. The mortgage/liens were obtained by the Creditor in 2010 and 2015. The mortgage/liens were filed of record on October 13, 2010, in the Franklin County Court of Common Pleas, as Lien No 10 JG 1039606 and on September 29, 2015, in the Franklin County Court of Common Pleas, as Lien No 15 JG 0937273.

6. Value of the property: $130,300.00

   Total amount of all mortgages/liens
   Superior to the Creditor's mortgage/lien: $130,346.91

7. The amount of the mortgage(s)/lien(s) senior to the mortgage/lien to be avoided exceeds the value of the Property. As a result, there is no equity to which the Creditor's mortgage/lien may attach, and the Creditor's mortgage/lien is wholly unsecured and void under the combined effect of 11 U.S.C. §§506(a), 1322(b)(12), 1325(a) and 1327(c) and the terms of the Debtor's confirmed plan. *See Lane v. Western Interstate Bancorp. (In re Lane),* 280 F.3d 663 (6th Cir. 2002).

8. Unless otherwise ordered, the claim of the Creditor, if filed, shall be allowed and paid only as an unsecured nonpriority claim and shall be treated under the Debtor's Chapter 13 plan in the same manner as all other unsecured nonpriority claims.

9. Upon plan completion and discharge, the mortgage/liens of the Creditor on the Property will be avoided. If the Creditor fails to timely release the mortgage/liens, the Debtor may submit an order granting this motion to the applicable court or recorder's office as evidence of the release of the Creditor's mortgage/liens.

WHEREFORE, the Debtor requests that the court grant the Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void.

Respectfully submitted,

/s/ Danielle R Weinzimmer
Danielle R Weinzimmer (0082119)
Attorney for Debtor

NOTICE OF MOTION FOR DETERMINATION THAT MORTGAGE/LIEN IS WHOLLY UNSECURED AND VOID

Notice is hereby given that Debtor has filed the following papers with the Court: Motion for Determination that Lien is Wholly Unsecured and Void.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought, or if you want the Court to consider your views thereon, then on or before twenty-one (21) days from the date of service of this Notice, you or your attorney must:

File with the Court a written request for a hearing along with a written response or an answer explaining your position. This pleading must be filed at Clerk of Courts, United States Bankruptcy Court, 170 N. High St., Columbus, OH 43215. If you mail your request and response to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above. The Court will send out a Notice of hearing. You must also mail a copy to:

Office of the US Trustee
170 N. High St., #200
Columbus, OH 43215

Khandi Phaka Loko
3252 Stoudt Place
Canal Winchester, OH 43110

Frank M. Pees - Chapter 13 Trustee
130 E. Wilson Bridge Road, Suite 200
Worthington, OH 43085

Danielle R Weinzimmer
23 E. Kossuth St.
Columbus, OH 43206

IF YOU OR YOUR ATTORNEY DO NOT TAKE THESE STEPS, THE COURT MAY DECIDE THAT YOU DO NOT OPPOSE THE RELIEF SOUGHT IN THE MOTION AND MAY ENTER AN ORDER GRANTING THAT RELIEF WITHOUT FURTHER HEARING OR NOTICE.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void was served (i) electronically on the date of filing through the court's ECF System on all ECF participants registered in this case at the email address registered with the court and (ii) by ordinary U.S. Mail on March 30, 2017 addressed to:

Khandi Phaka Loko
3252 Stoudt Place
Canal Winchester, OH 43110

State of Ohio, Department of Taxation
P.O. Box 182401
Columbus OH 43218

State of Ohio, Department of Taxation
30 E. Broad Street, 17th Floor
Columbus OH 43215

Attorney General of the State of Ohio
Collection Enforcement
150 E. Gay St., 21st floor
Columbus, OH 43215

Ohio Department of Taxation
Bankruptcy Department
Attn: Rebecca Daum
P.O. Box 530
Columbus, OH 43216

/s/ Danielle R. Weinzimmer
Danielle R. Weinzimmer (0082119)
Attorney for Debtor
23 E. Kossuth St.
Columbus, OH 43206
(614) 228-4435
(614) 228-3882 *fax*
Danielle@fcwlegal.com

LIMITED DEED

State of Ohio
Franklin County

FHA Case No. 413-399922

N05-28670-COL

Know All Men By These Presents, That the Secretary of Housing and Urban Development (hereinafter referred to as "Grantor), who acquired title by deed recorded as OR Instrument Number 200806200095376 , Recorder's Office Franklin County, Ohio, for the consideration of $120,000.00 to him paid by Khandi Phaka Loko (hereinafter referred to as "grantee(s)", whose tax mailing address will be 3252 Stoudt Place, Canal Winchester, OH 43110 the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed released and confirmed and by these presents doth grant, bargain, sell, alien, eneoff, release and confirm unto the Grantee(s), the following described property;

Situated in the State of Ohio, County of Franklin, and in the City of Columbus:

Being Lot Number One Hundred Thirty-Eight (138) of Kensington Glen Section 3, Part 2, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 99, pages 77 and 78, Recorder's Office, Franklin County, Ohio.

Permanent Parcel No.: 530-261948-00
AKA: 3252 Stoudt Place, Canal Winchester, OH 43110

Being the same property acquired by the Grantor pursuant to the provisions of the National Housing Act, as amended (12 U.S.C. 1701) and the Department of Housing and Urban Development Act (42 U.S.C. 3531).

Subject To All covenants, restrictions, easements, conditions, and rights appearing of record; and Subject to any state of facts an accurate survey would show.

To Have And To Hold said premises, with the appurtenances thereunto belonging, to the said Grantee(s), and to the heirs and assigns of said Grantee(s), forever.

And The Said Grantor, and his successors, hereby covenants with the said Grantee(s), and the heirs and assigns of said Grantee(s), that said premises are free and clear from all encumbrances, whatsoever, by, from agreements, covenants and conditions of record; and Except any state of facts with which would be disclosed by an accurate survey of the premises herein conveyed.

Said Grantor, and his successors, hereby further covenants that said Grantor, and his successors, will Forever Warrant And Defend the same with the appurtenances thereunto belonging, unto said Grantee(s), and the heirs and assigns of said Grantee(s), against the lawful claims of all persons claiming by, from, through, or under the said Grantor herein.

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Pgs: 2 $28.00 T20080077528
12/03/2008 3:19PM BXLAKESIDE TI
Robert G. Montgomery
Franklin County Recorder

917926
CONVEYANCE TAX
EXEMPT
JOSEPH W. TESTA
FRANKLIN COUNTY AUDITOR

TRANSFERRED

DEC 03 2008

JOSEPH W. TESTA
AUDITOR
FRANKLIN COUNTY, OHIO

In Witness Whereof, the undersigned on 12/1/08 has set his hand and said as Authorized Agent for and on behalf of the Secretary of Housing and Urban Development, under authority and by virtue of a delegation of authority published at 70FR 43171 (July 26,2005")

Secretary of Housing and Urban Development

_______________ **(Seal)**
Title: Designated Signatory for
National Home Management Solutions, LLC,
Marketing and Management Contractor Authorized Agent

NOT A CERTIFIED COPY

State of Ohio
County of Cuyahoga

Before me, the undersigned, a notary public in and for the State and County, personally appeared the above named Tiffany Garber, known to me to be the Designated Signatory for Secretary Housing and Urban Development, and the person who executed the foregoing instrument bearing the date of 12-1, 2008, by virtue of the authority vested in him by the above cited authority, and acknowledged the signing therefore, and that such signing was freely and voluntarily performed, as his act and deed as Designated Signatory, for and on behalf of the Secretary of Housing and Urban Development, for the uses and purposes mentioned.

In testimony wherefore, I have hereunto signed my name and affixed my official seal this 1 day of Dec, 2008.

____
Notary Public

NOTARIAL SEAL STATE OF OHIO

JANET L. KAISER
Notary Public
In and for the State of Ohio
My Commission Expires
October 14, 2011

PREPARED BY: THE O'BRIEN LAW FIRM, LPA.,
LAKESIDE TITLE AND ESCROW AGENCY, INC.
6200 OAK TREE BLVD., SUITE 260
INDEPENDENCE, OHIO 44131
216-771-1272